performance, no general charitable intention can be inferred from the terms of the trust. If the trust lapses by reason of its becoming incapable of performance there is a resulting trust in favour of the settlor or, as in this case, in favour of his estate.

The only remaining question for consideration is whether the lapsed devise or trust goes to the residuary legatees or to the next of kin. Mr. Ong Huck Lim contended that it went to the residuary legatees, whereas Mr. Lim Cheng Ean argued that it went to the next of kin. I have always understood the law to be that a lapsed devise falls into residue, whereas a lapsed share of the residue goes to the next of kin as upon a partial intestacy. (See *Jarman on Wills*, 8th edition, Volume I, pages 468-9 and Volume II page 1030). I am therefore, of the opinion that in the event of the charitable trust lapsing by reason of impossibility of performance there would be a resulting trust in favour of the residuary legatees under the Will of the deceased.

To recapitulate, I accordingly hold:—

(i) That the deed of trust dated 8th May, 1912, at the present time constitutes a valid existing charitable trust; and

(ii) That in the event of the trust lapsing by reason of impossibility of performance, the terms of the trust cannot be construed in favour of a general charitable trust capable of being administered *cy-prés*, but that there is a resulting trust in favour of the residuary legatees of the settlor's estate.

*Order accordingly.*

Solicitors: *Ong Huck Lim & Co.; Chew Choon Poon; Presgrave & Matthews; Lim Cheng Ean.*

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## *In re* G. H. CONAGHAN

**[O. C. J. (Thomson C.J., Hill J.A. and Ong J.) October 24, 1960]**

**[K. L. — Originating Motion No. 6 of 1960]**

*Advocates and Solicitors — Professional misconduct — High standards of conduct to be observed by the legal profession — Public interest.*

The respondent, in his capacity as a solicitor, received $14,000 from a third party for payment to a client. The sum received was not paid to the client but was knowingly applied by the respondent to other purposes.

**Held:** what the respondent had done amounted to professional misconduct of the most serious character.

**Per curiam:** The legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards.

ORIGINATING MOTION.

*Ong Huck Lim* for the Disciplinary Committee.

*C. O. Lim* for the respondent.

**Thomson C.J.** (delivering oral judgment of the Court): The facts of this unfortunate case are not in controversy and unfortunately are only too clear.

We are in no way concerned with the domestic arrangements of the firm of Conaghan, Wreford & Thornton for it is abundantly clear that the conduct of the business of that firm in Penang was under the sole control of the present respondent.

He, in his capacity as a solicitor and having control of the firm, received $14,000 from a third party for payment to a client for whom the firm was acting. It is equally clear that that money was not, and to this day has not been, paid to the client for whom it was received but has been knowingly applied to other purposes.

That may or may not amount to fraud. It may or may not amount to dishonesty. It may or may not be capable of being described by the euphemism of "miscalculation" which has been used, but it certainly does amount to professional misconduct of the most serious character.

We have listened to a plea for leniency. I need hardly say we have given such weight as we possibly can to that plea. Nevertheless the fact remains that in all these cases there are three interests to be concerned. There is the interest of the solicitor; there is the interest of the legal profession as a whole; and there is the interest of the public. The legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards.

The present respondent has fallen far short of these standards. In consequence he has done harm not only to himself but also to his client and to his profession as a whole and to the public for in the modern world it is in the public interest that there should be a legal profession observing the highest possible standards of conduct.

In the circumstances we feel we have no option but to order the respondent to be struck off. There will be an order that he pays the costs of these proceedings which we assess at $500.

*Order accordingly.*

Solicitors: *Pillai, Lim, Lee & Hwang; Lim, Lim & Oon.*

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## TEOH AH POW v. PUBLIC PROSECUTOR

**[A. Cr. J. (Rigby J.) November 1, 1960]**

**[Penang — Criminal Appeal No. 35 of 1960]**

*Gaming — Common Gaming Houses Ordinance, 1953, ss.7 and 16 — Forfeiture — Gaming House — Public place.*

The appellant was convicted together with another person of being found gaming in a public place contrary to section 7 of the Common Gaming Houses Ordinance 1953. In his defence the appellant said that he had gone to the house to look for a friend and that he had taken no actual part in gaming. The learned Magistrate disbelieved the accused and convicted him, fining him $50. The learned Magistrate purporting to act under section 16(2) of the Common Gaming Houses Ordinance ordered that the loose money found in the appelllant's pocket be